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10/574,622

04/05/2006

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EXAMINER

COSIMANO, EDWARD R

ART UNIT

PAPER NUMBER

2863

MAIL DATE

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/574,622

Applicant(s)

ISHII ET AL.

Examiner

Edward R. Cosimano

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2863

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 01 June 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-5 is/are pending in the application.
- 4a) Of the above claim(s) none is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-5 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 5/4/06 & 6/1/07 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date 04/05/2006.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____.

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1. The Oath/Declaration as originally filed and the Abstract as amended on 05 April 2006 are acceptable to the examiner.
2. Applicant's claim for the benefit of an earlier filing date pursuant to 35 U.S.C. 120 is acknowledged.
3. The examiner has considered the prior art cited in the base applications.
4. Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.
5. The set of drawings containing 7 sheets of 7 drawings numbered as figures 1, 2, 3, 4 & 6 as presented in the set of drawings filed on 05 April 2006 and figures 5 & 7 as presented in set of drawings filed on 01 June 2007 are acceptable to the examiner.
 - 5.1 The examiner has approved the proposed changes to figures 5 & 7 of the drawings as filed on 01 June 2007.
6. The disclosure is objected to because of the following informalities:
 - A) the disclosure lacks a statement of --We claim:--, as required by Office policy as set forth in MPEP 608.01(m).
- 6.1 Appropriate correction is required.
7. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.
- 7.1 Claims 1-5 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
 - 7.1.1 It is noted that as one of ordinary skill at the time the invention was made would interpret claim 1, this claim positively recites a machine that comprises a first structure comprising a shared common communication bus/link interconnecting at least two second structures or network devices, in other words a machine consisting of a single shared common communications bus/link that interconnects the two or more network devices. Further, as one of ordinary skill at the time the invention was made would interpret claim 1, this claim further includes the positive recitation of two "wherein clause" that further define the both the structure and function of the second structures, that is as defined in:

A) the first wherein clause this clause positively recites that at least a first one of the plurality of second structures includes:

(1) a first substructure that functions as a first measurement structure and performs the function of measuring in an unspecified manner a first unspecified variable during each cycle of a measurement cycle, and

(2) a second substructure that functions as a first output structure and performs the function of outputting the measurement results of the first substructure on to the first structure during each cycle of the measurement cycle; and

B) the second wherein clause this clause positively recites that at least a second one of the plurality of second structures includes:

(1) a third substructure that functions as a detector structure and performs the function of detecting the cycle of the measurement cycle based upon the timing of the plurality of times that the second substructure has functioned to output the results of the first substructure;

(2) a fourth substructure that functions as a second measurement substructure and performs the function of measuring in an unspecified manner a second unspecified variable during each detected cycle of a measurement cycle as determined by the fourth substructure; and

(3) a fifth substructure that functions as a second output structure and performs the function of outputting the measurement results of the fourth substructure on to the first structure.

7.1.2 It is noted that as one of ordinary skill at the time the invention was made would interpret claim 2, this claim positively recites a machine that comprises a first structure comprising a shared communication bus/link interconnecting at least two second structures or network devices, in other words a machine consisting of a single shared common communications bus/link that interconnects the two or more network devices. Further, as one of ordinary skill at the time the invention was made would interpret claim 2, this claim further includes the positive recitation of a first "wherein clause" that further defines both the structure and function of the second structures, that have been previously recited and are defined in:

A) the first wherein clause this clause positively recites that at least a first one of the plurality of second structures includes:

(1) a first substructure that functions as a first measurement structure that uses a first reference timing to perform the function of measuring in an unspecified manner a first unspecified variable, and

(2) a second substructure that functions to:

(a) add measurement timing data/information to the results of the measurement performed by the first substructure;

(b) as a first output structure that performs the function of outputting the measurement results of the first substructure with the added timing data/information on to the first structure.

7.1.3 It is noted that as one of ordinary skill at the time the invention was made would interpret claim 3, that is a combination of the subject matter recited in dependent claim 3 with the subject matter recited in base claim 2, this claim positively recites a machine that comprises in addition to the machine of claim 2 a positive recitation of a second "wherein clause" that further defines both the structure and function of the second structures, that have been previously recited and are defined in:

B) the second wherein clause that positively recites that at least a second one of the plurality of second structures includes:

(1) a third substructure that functions as a second measurement substructure and performs the function using the measurement timing data/information added to the measurement of the first substructure to perform the functions of measuring in an unspecified manner a second unspecified variable; and

(2) a fourth substructure that functions as a second output structure and performs the function of outputting the measurement results of the third substructure on to the first structure.

7.1.4 Although the invention recited in claims 1, 2 & 3 would be operative and useful to provide the desired useful and beneficial function of a measurement network when there is a single second structure that functions to provide the function of outputting the data/information

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to the first structure, however it is noted that as recited in claims 1, 2 or 3, as one of ordinary skill at the time the invention was made would reasonably interpret claims 1, 2 or 3, these claims:

A) clearly positively recite embodiments of the invention in which there are more than one second structure that would perform the functions of the first and second substructures of claim 1, 2 & 3; and

B) clearly positively recite embodiments of the invention in which there are more than one second structure that would perform the functions of the third, fourth and fifth substructures of claim 1 or the third and fourth substructures of claim 3; and

C) that these claims clearly fail to positively recite any structure that would be recognized as providing any function that would resolve the conflicts and/or interference and/or corruption of the data/information that is being outputted to the first structure by then recited more than one second structures that are being controlled to simultaneously or concurrently perform the recited positively function of outputting data/information to the first structure.

Further, as one of ordinary skill at the time the invention was made would recognize any embodiment of the invention in which there is more than one second structure that functions to perform the unregulated or unsynchronized or uncontrolled function of "outputting data/information to the first structure" would result in a corruption of the data/information on the first structure because of conflicts and/or interferences between the data/information that is being separately being outputted to the first structure by each of the second structures that are performing the function of "outputting data/information to the first structure".

7.1.5 In view of the above, it is noted that one of ordinary skill at the time the invention was made would recognize that any embodiment of the recited invention that would uses more than one of the recited second structures to perform the unregulated or unsynchronized or uncontrolled function of "outputting data/information to the first structure" would in fact cause the embodiment of the recited invention to be inoperative and not useful to provide the desired utility of a "network", because these embodiments would result in conflicts and/or interference and/or corruption the data/information that is being outputted to the first structure by the more than one second structures that are performing this unregulated or unsynchronized or uncontrolled function of "outputting data/information to the first structure".

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7.1.6 In view of the inoperability of the invention that would not be useful as a network, see above, then one of ordinary skill at the time the invention was made would consider the invention of claim 1 or claim 2 or claim 3 to be vague, confusing and indefinite in regard to how:

A) the resultant conflicts and/or interference and/or corruption of the data/information that is being outputted to the first structure by the positively recited more than one second structures in an unregulated or unsynchronized or uncontrolled function of "outputting data/information to the first structure" would be resolved so that all of the recited invention would be reasonably interpreted by one of ordinary skill to be operative to provide an useful and beneficial network; or

B) the third "substructure" of any one of the "second structures" that would receive data/information from the first structure in claims 1 or 3 could usefully and beneficially determine which one of the positively recited second structures that perform the function of outputting data/information to the first structure has in fact performed the function of outputting data/information to the first structure so that the third substructure may properly in an useful and beneficial manner determine "the predetermined cycle" claim 1 or the "reference timing" of claims 2-5 as positively recited in claims 3-5, because there are more than one second structure that performs the function of "outputting data/information" to the first structure.

C) the third substructure, that is contained in each of the more than one second structures that perform the functions of the third, fourth and fifth substructure of the second structure as recited in claim 1, could usefully and beneficially perform the function of detecting "a predetermined cycle" based on the detection of the timing of when a second substructure performs the function of outputting the data/information to the common first structure so that the fourth substructure may be controlled to make the unspecified measurements when the performance of the function of outputting data/information to the first structure by either:

(a) any of the other second substructures in the second structures in claims 1, 2 or 3; or

(b) any of the other fifth substructures in the second structures in claim 1;

or

(c) any of the fourth substructures in the second structure in claim 3; would conflict, interfere and/or corrupt the data/information that is being outputted to the first structure by any of the other positively recited second structures of claims 1, 2 or 3 that perform the function of outputting data/information to the first structure; or

D) the third substructure, that is contained in each of the more than one second structures that perform the functions of the third, fourth and fifth substructure of the second structure as recited in claim 3, could usefully and beneficially perform the function of detecting the timing data/information on the first structure in order to modified/adjust in an useful and beneficial manner the measurement timing of the third substructure contained within any of the second structures that perform the function of the third substructure of claim 3, when the performance of the function of outputting data/information to the common first structure by either:

(a) any of the other second substructures in the second structures in claims 2 or 3; or

(b) any of the fourth substructures in the second structure in claim 3; would conflict, interfere and/or corrupt the data/information that is being outputted to the first structure by any of the other positively recited second structures of claims 2 or 3 that perform the function of outputting data/information to the first structure.

7.2 In regard to claim 4, which includes the subject mater recited in claim 2 by dependency, because one of ordinary skill at the time the invention was made would recognize this claim clearly fails to positively recite that the same reference timing is produced by each of the second structures that perform the functions of the first substructure of claim 2, then one of ordinary skill at the time the invention was made would consider claim 4 to be vague, confusing and indefinite in regard to how and of the second substructures would be able to usefully and beneficially output data/information to the first structure because the performance of the function of outputting data/information to the common first structure by any of the other second substructures in the second structures in claim 2 would conflict, interfere and/or corrupt the data/information that is being outputted to the first structure by any of the other second structures of claim 4.

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7.3 In regard to claim 5, which includes the subject matter recited in claim 2 by dependency, because one of ordinary skill at the time the invention was made would recognize this claim clearly fails to positively recite the use of any sort of identification of the “certain second structure that generates the reference timing” then the reference timing that is used by each of the first substructures contained with each of the second structures that perform the functions of the first substructure of claim 2, then one of ordinary skill at the time the invention was made would consider claim 5 to be vague, confusing and indefinite in regard to how and of the first substructures would be able to usefully and beneficially use the reference timing to perform the function of measuring the first variable because the performance of the function of outputting data/information to the common first structure by any of the other second substructures in the second structures in claim 2 would conflict, interfere and/or corrupt the data/information that is being outputted to the first structure by any of the other second structures of claim 5 and hence the measurements of the first variable of claim 2 would not be synchronized.

8. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

8.1 Claims 1-5 are rejected under 35 U.S.C. 101 because the claimed invention is inoperative not therefore not useful

8.1.1 It is noted that in view of the arguments used above in section 7, recited invention would be interpreted to be inoperable and not usefulness.

9. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

9.1 Claims 2, 4 & 5 are rejected under 35 U.S.C. 102(b) as being anticipated by Sakurada et al (JP 2-81550 A).

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9.1.1 In regard to claims 2, 4 & 5, Sakurada et al ('550) discloses a machine/process that provides the useful and beneficial function of synchronizing a network of at least two machines/processes that are interconnected by a common shared communication link/bus. To synchronize the network of machines/processes this machine/process controls the operation of the networked machines/processes by using a first networked machine/process as a central machine/process to perform the function of communicating data/information to a number of second networked machines/processes via the common shared communications link/bus. Where the transmitted data/information includes at least the measurement timing data/information and the communications timing data/information that is used by at least one of the second networked machine/process to perform the functions of:

A) making measurements of a parameter or variable at a predetermined measurement interval or cycle; and

B) transmitting the measurement data/information to the central location/station at a relative predetermined communications slot/time.

10. Response to applicant's arguments.

10.1 The objections and rejection that have not been repeated here in have been over come by applicant's last response.

10.2 How Claims are to be interpreted during the prosecution of an application for patent.

10.2.1 The pending claims are interpreted by giving the language of every positively recited limitation of the pending claims the broadest reasonable interpretation that is consistent with how one of ordinary skill at the time of the invention would have interpreted the language of the claims, In re Cortright, 165 F.3d 1353, 1359, 49 USPQ2d 1464, 1468 (Fed. Cir. 1999), while (1) taking into account whatever enlightenment by way of definitions or otherwise that may be afforded by the written description contained in applicant's specification, In re Morris, 127 F.3d 1048, 1054-55, 44 USPQ2d 1023, 1027-28 (Fed. Cir. 1997), and (2) without reading unrecited limitations from applicant's disclosure in to the claims, see In re PRATER AND WEI, 162 USPQ 541 at 551 (CCPA 1969) "We are not persuaded by any sound reason why, at any time before the patent is granted, an applicant should have limitations of the specification read into a claim where no express statement of the limitation is included in the claim.", In re PRATER AND WEI, 162 USPQ 541 at 551 (CCPA 1969).

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10.2.2 Further, when interpreting the claims as a whole, then the interactions of claim limitations as a whole must be considered in order to determine the scope of a claim and the applicant's contribution in the art, In re LARSEN, No. 01-1092 (Fed. Cir. May 9, 2001) (unpublished) "The court observed that the totality of all the limitations of the claim and their interaction with each other must be considered to ascertain the inventor's contribution to the art." Where a statutory process/machine must contain an operative series of acts/functions or structures, In re MUSGRAVE, 167 USPQ 280 at 289-290 (CCPA 1970), with explicitly recite all of the necessary interactions to accomplish the recited utility of the claimed invention, for without these interaction the claim as a whole would not be a proper process/machine under the statute, In re SARKAR 200 USPQ 132 at 136 (CCPA 1978).

10.2.3 In regard to the limitations on the interpretation of the claimed invention as imposed by the Court, because it is noted that applicant has gone to great lengths in the written description to describe each of the claimed structures or actions recited in the limitations of the claimed invention by using a written description that:

A) does not describing a specific structure or a specific action to provide a recited function; and

B) merely describing the claimed structures or actions by describing the function of each of the claimed structures or actions;

then, it is noted that as set forth by the Court each of the limitations of the claims would be reasonably interpreted by one of ordinary skill at the time of the invention as not being not limited solely to the structures or actions that would correspond to the written description of the claimed structures or actions. Therefore, in fact the limitations of the claims would to be broadly interpreted by one of ordinary skill at the time the invention was made to include any and all structures or actions that would provide the corresponding functions that have been recited for the structures or actions that are recited in the limitations of the claimed invention.

10.2.4 As a final note, although it is conceivable that one of ordinary skill may know many different processes/structures that would achieve the functions of the structures and actions recited as claimed invention, since the claims fail to positively recite the antecedent structures or antecedent actions that one of ordinary skill at the time the invention was made would have

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recognized as being required to achieve any function, then these missing antecedent structures or actions may not be attributed to the claimed invention.

10.3 In regard to the rejection of claims 1-5 under either 35 U.S.C. 112 2nd paragraph, applicant's arguments are deemed non-persuasive and this rejection has been maintained in view of the respective modified rejection as set forth above and the following considerations.

10.3.1 In regard to applicant's arguments regarding the nature of the subject matter recited as the invention and the functions/acts that as recited in the claims are performed by the instant invention. It would appear that applicant has not considered what the knowledge of one of ordinary skill would be regarding the claimed invention, how one of ordinary skill would interpret the limitations of the claimed invention, and has read constraining limitation from the disclosure into the claims, which is a practice that the Court has instructed the Patent Office not to do, see In re PRATER AND WEI, 162 USPQ 541 at 551 (CCPA 1969).

11. The following is a statement of reasons for the indication of allowable subject matter over the prior art:

A) the prior art, for example:

(1) Shoup et al (4,831,558) discloses a machine/process that provides the useful and beneficial function of network of measuring machines/process that use a shared single communication link in order to transmit measurement data/information to a central location/station.

(2) Sakurada et al (JP 2-81550 A) discloses a machine/process that provides the useful and beneficial function of synchronizing a network of at least two machines/processes that are interconnected by a common shared communication link/bus. To synchronize the network of machines/processes this machine/process controls the operation of the networked machines/processes by using a first networked machine/process as a central machine/process to perform the function of communicating data/information to a number of second networked machines/processes via the common shared communications link/bus. Where the transmitted data/information includes at least the measurement timing data/information and the communications timing data/information that is used by at least one of the second networked machine/process to perform the functions of:

(a) making measurements of a parameter or variable at a predetermined measurement interval or cycle; and

(b) transmitting the measurement data/information to the central location/station at a relative predetermined communications slot/time.

(3) either Mishory (GB 2236606 A) or Iwase (10-84365 A) or Zinke et al (2005/0094674) disclose a machine/process that provides the useful and beneficial function of preventing communication conflicts between a number of networked machine/processes share a common communication link.

(4) Dupont et al (5,974,106) discloses a machine/process that provides the useful and beneficial function of permitting the adjustment of the synchronization of communication time slot for individual machines/processes within a network from an initial value in order to meet the communications requirements of each of the individual machines/processes within the network.

(5) either Rasanen et al (2002/0093914 or 7,042,844) disclose a machine/process that provides the useful and beneficial function of permitting the adjustment of the transmission/reception data rate for the individual machines/processes within a network from an initial value by using coded changes with in transmitted frames of data/information to indicate the changes in the transmission/reception data rate for the individual machines/processes within a network.

B) however, the prior art does not fairly teach or suggest in regard to claim 1 a machine in claim 1 that provides the useful and beneficial function of synchronizing the measurement cycle and communications time slots for each of a number of networked machines/processes that make measurements and communicate the measurement data/information to a common or shared communication link/bus by providing structures in claim 1 that perform the functions of:

(1) at least one first networked machine/process that functions to perform the sub-functions of:

(a) generating first measurement data/information by measuring a first variable during each cycle of a predetermined measurement cycle; and

(b) outputting the first measurement data/information to the common or shared communication link/bus during each cycle of the predetermined measurement cycle; and

B) at least one second networked machine/process that functions to perform the sub-functions of:

(a) detecting the cycle of the predetermined measurement cycle by using the timing of the plurality of times that the at least one first networked machine/process has functioned to output the first measurement data/information to the common or shared communication link/bus;

(b) generating second measurement data/information during each cycle of the detected predetermined measurement cycle; and

(c) outputting the second measurement data/information to the common or shared communication link/bus during each cycle of the detected predetermined measurement cycle.

C) however, the prior art does not fairly teach or suggest in regard to claim 3 a machine in claim 3 that provides the useful and beneficial function of synchronizing the measurement cycle and communications time slots for each of a number of networked machines/processes that make measurements and communicate the measurement data/information to a common or shared communication link/bus by providing structures in claim 3 that perform the functions of:

(1) at least one first networked machine/process that functions to perform the sub-functions of:

(a) generating first measurement data/information by measuring a first variable at a predetermined reference timing;

(b) generating second data/information by adding measurement timing data/information to the first measurement data/information; and

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(c) outputting the second data/information to the common or shared communication link/bus; and

(2) at least one second networked machine/process that functions to perform the sub-functions of:

(a) using the timing data/information in the second data/information to generate second measurement data/information at measurement intervals or timings or periods relative to a base time; and


(b) outputting the second measurement data/information to the common or shared communication link/bus.

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Edward R. Cosimano whose telephone number is 571-272-0571. The examiner can normally be reached on 571-272-0571 from 7:30am to 4:00pm (Eastern time).

12.1 If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Barlow, can be reached on 571-272-2269. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

12.2 Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

ERC
08/14/2007


Edward Cosimano
Primary Examiner